

09-3234
LOCALLY ASSESSED PROPERTY
SIGNED 07-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF DUCHESNE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-3234</p> <p>Parcel No. #####-1 / #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2009</p> <p>Judge: Dixon Pignanelli</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER 1, Pro Se, by telephone

For Respondent: RESPONDENT REP., Deputy County Assessor, Duchesne County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the Duchesne County Board of Equalization (BOE). The County Assessor set the value at \$\$\$\$\$ and the County BOE reduced the value to \$\$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an Initial Hearing was held on April 30, 2010 in the Commission Office in Salt Lake City with the Petitioner and Respondent participating by phone. The Property Owner requested the value of the subject parcel be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested the value set by the County BOE of \$\$\$\$\$ be sustained.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

The subject property is parcel no. #####-1 and is located at LOT A, DEVELOPMENT, CITY, Duchesne County, Utah. It is a 5-acre lot with a septic system, and storage shed. The Property Owner stated the subject property is part of the DEVELOPMENT, but part of the DEVELOPMENT, including the subject property, is in the “(X)” and not the hills of the gated community. At one time, CREEK, running out of RESEVOIR, about one mile above the subject property, ran through the subject property; however, about three or four years ago the creek was piped by the irrigation company. A trickle of water was left to run on the property to create wetlands. He estimates the wetlands make 2 ½ to 3 acres of the 5-acre lot unusable. When he bought the property he had a stream, now he has a trickle and wetlands. He agreed that a portion of the lot was always unbuildable due to the stream, but he felt a stream made the property more desirable and valuable. He said the lot is essentially two flat lots attached to each other--the half that is wetlands and the half that is 15 feet above the wetlands. He said his lot has one mature cedar tree. He also testified his property does not have year-round access like the properties in

the gated community where the roads are plowed. The subject property is on a side access road that in winter gets four feet of snow. Finally he said there is a 16' x 16' shed for which he submitted a building application in 1993, but the County told him he did not need one, and to "just build it" so he does not have the value the County would have placed on it then, but feels it is over valued by the County. He agreed he was still using the shed, but termed it an "eyesore" that is 17 years old and needs to be torn down. He says it has no value and will cost him \$\$\$\$\$ to tear down. The Property Owner also said that availability of utilities versus stubbed utilities makes a difference in value. He said because his property is more isolated down an access road, it will cost more to run power to the lot. He said seven years ago the power company wanted \$\$\$\$\$ to run power to the lot; he estimated it would cost \$\$\$\$\$ now. In addition, water lines would have to be run to the property and seven years ago the water company told him it would cost \$\$\$\$\$; he believes it would be double that cost today. He said five years ago he installed a septic system when he considered building on the property. It is not connected to anything, and he felt would never "be commissioned", but he placed a value of \$\$\$\$\$ on it.

The Property Owner provided five comparable sales. He proffered they were all above the subject property, on the hill, in the gated area of DEVELOPMENT. These are summarized in the chart below:

Address	lot size/sq ft	sale \$ amount sale date	other
Subject Property LOT A DEVELOPMENT CITY, Duchesne County	5 acres unimproved except shed		Power : available, not stubbed Water: available, not stubbed Sewer: none, septic installed 5 years ago Gas: none Access: gravel Topo: hilly Other: no trees, not in gated community, no year round access, much of lot drainage area
Property Owner's Comp 1 ADDRESS 2 SUBDIVISION CITY Proximity to subject: same development	5.43 acres	\$\$\$\$\$ 10/11/2006	Power stubbed, connect fee water: stubbed, connect fee Sewer: none Gas: none Access: gravel Topo: hilly Other: in gated area
Property Owner's Comp 2 CITY, DEVELOPMENT (X) phase Proximity to subject: same development	5 acres	\$\$\$\$\$ sometime in 2009	Power: available Water: culinary available Sewer: none, septic tank Gas: available Access: gravel Topo: flat to grad slope, wooded/trees, view Other: year round access horse property
Property Owner's Comp 3 STREET 2 CITY, DEVELOPMENT	5 acres	\$\$\$\$\$ 1/15/07	Power: available, connect fee Water: culinary available and stubbed Sewer: none, septic tank Gas: none Access: dirt, asphalt

Proximity to subject: same development			Topo: flat to grad slope, mature trees, view Other: in gated area, year round access horse property. Installed \$\$\$\$ water meter.
Property Owner's Comp 4 ADDRESS 3 CITY, DEVELOPMENT Proximity to subject: same development	5 acres	\$\$\$\$ 6/12/2009	Power: available Water: culinary available Sewer: none, septic tank Gas: available Access: dirt, gravel Topo: flat to grad slope, trees, view Other: in gated area, year round access horse property.
Property Owner's Comp 5 ADDRESS 4 CITY, UT DEVELOPMENT Proximity to subject: same development	5 acres	\$\$\$\$ 3/4/2008	Power: available Water: available Sewer: private, septic tank Gas: none Access: gravel Topo: hilly, mature trees Other: horse property Remarks: "property has water, electrical and septic tank in."

The Property Owner said he considered Comp #5 most significant since it had a septic system like his, but also had power and water and had the highest selling price of his comparables. He said it would indicate \$\$\$\$ was the highest price a lot would sell for even with all the utilities.

The Property Owner computed the average selling price of his five comparables to be \$\$\$\$\$. From that value he made the following deductions:

Subject not in gated community: minus \$\$\$\$\$
 Septic separate on tax notice: minus \$\$\$\$\$
 Cost to run power: minus \$\$\$\$\$
 Cost to run water line: minus \$\$\$\$\$
 Unusable acreage: no deduction
 Mature trees/wooded: minus \$\$\$\$\$ (\$\$\$\$ for each)
 Out building: minus \$\$\$\$\$ tear down costs
 All year access: minus \$\$\$\$\$

Making all the deductions he concluded a property value of \$\$\$\$\$. He then added back \$\$\$\$ for the septic system he installed and subtracted \$\$\$\$ to tear down the storage shed, and arrived at the \$\$\$\$\$ value he was requesting.

The County provided the following rebuttal to the Property Owners' comparables: Comp 2 and Comp 4 sold in 2009 after the lien date; Comp 1, Comp 4, and Comp 5 have hilly topography and someone would pay less for a hilly lot; Comp 4 has water and power, but must be connected; and Comp 3 although flat still needs all utilities. The County stated standard costs are applied to any property for installation of utilities. These are: \$\$\$\$ for power, \$\$\$\$ for water, and \$\$\$\$ for sewer/septic.

The County provided three comparable sales of vacant lots. The Property Owner had not received the information prior to the hearing so the County proffered the following information:

Comp 1 370 feet from subject in gated area	4.5 acres	Sold 4/1/06 \$\$\$\$\$	\$\$\$\$\$ adjusted selling price	One utility stubbed on the property and a septic system
Comp 2 .35 miles from subject in gated area.	5 acres	Sold 12/20/07 \$\$\$\$\$	\$\$\$\$\$ adjusted selling price	No information
Comp 3 1.35 miles from subject in gated area.	5 acres	Sold 2/22/08 \$\$\$\$\$	\$\$\$\$\$ adjusted selling price	Flat, no utilities

The County stated it had seen stable sales through the first quarter of 2008 with 5-acre vacation lot sales ranging from \$\$\$\$\$ to \$\$\$\$\$. The County searched for a few more sales before coming into the hearing and verbally stated the following: a 5-acre lot sold in September 2007 for \$\$\$\$\$; a 5-acre lot in the gated area sold August 2008 for \$\$\$\$\$ (no information about utilities), and a 2-acre lot in the gated area sold for \$\$\$\$\$ on September 2008 (no information about utilities).

In seeking a value lower than that established by the County BOE the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing. The Property Owner has provided comparable sales and information about the subject property. The Commission holds the Property Owner has provided enough information to call into question the value of \$\$\$\$\$ placed on the subject property and improvements by the BOE. The Commission now considers the totality of the evidence.

Two of the Property Owners' comparables sold after the lien date of January 1, 2009, which is the moment in time a value for the subject property must be determined. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore "the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts (Utah Code Ann. 59-2-102(12)).

Both the Property Owner and County had three comparable sales prior to the lien date. The County adjusted its comparable sales to the January 1, 2009 lien date, for values of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$; however, there were no MLS sheets and the basis of the adjustments was not clear. There were no specific details proffered on the County's Comp 2, and few details on Comp 3, and the details on Comp 3 would indicate a flat lot further inside the gated community would command a higher value. The County's Comp 1 was 370 feet from the subject property, the topography was hilly, it had utilities stubbed and a septic system. It sold for \$\$\$\$\$ in 2006, and had an adjusted selling price of \$\$\$\$\$; however, the county's adjustments are unclear. The Property Owner said he considered his Comp 5 to be most representative of what the market would bear in 2008. It was a 5-acre horse property lot inside the gated community, with mature trees, a septic system, and power and water, and sold for \$\$\$\$\$ on March 4, 2008. Comp 5 is most similar to the County's Comp 1 which the County proffered was very near the subject property. Comp 5 appears to be most representative of market sales of lots that are hilly or have varying topography like the subject property that is not completely flat. The County testified it had seen stable sales for 5-acre vacation lots ranging from \$\$\$\$\$ to \$\$\$\$\$ in the 1st quarter of 2008. The Property Owners' Comp 5 at \$\$\$\$\$ is within that range. There was no testimony on the market towards the end of 2008 near the lien date.

The Commission will now consider the deductions requested by the Property Owner. The Property Owner testified a lot in the gated community with year-round access is a superior location. The County did not dispute these assertions. The Property Owner requested a \$\$\$\$\$ deduction for not being in the gated community and \$\$\$\$\$ adjustment for lack of year-round access from being in a gated community. The Commission finds these adjustments are appropriate. The Commission notes the BOE also made an adjustment for the lot being "non HOA" or not in the gated community. The Property Owner testified that running sewer and water to his property would be a higher cost than for those lots in the gated community, but did not provide any current cost estimates. The Comp 5 sale already assumes varying topography so the Commission makes no adjustment. The Commission does not have enough information on the value of lots with or without trees to rule on an adjustment to value. In terms of useable area of the lot, the Property Owner did not request an adjustment in value. Finally, the Property Owner testified the shed has no value and actually will cost him money to tear down and would be a deterrent to a potential buyer; however the Property Owner stated he is still using the shed and did not provide any photos to substantiate it does not have a longer life expectancy.

Reviewing the evidence presented the Commission finds the BOE value for the subject lot is in error and the property owner has provided an evidentiary basis to support a lower value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the land for parcel no: #####-1 as of January 1, 2009 is \$\$\$\$\$, and the value of the improvements on the parcel is \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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